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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA)	Case No. CR 17-394 EMC-2
14 v.)	STIPULATION AND [PROPOSED] PROTECTIVE
15 JOSEPH RIVERA, a/k/a "Joey," and OSCAR)	ORDER REGARDING PRODUCTION OF
16 VANEGAS,)	"PROTECTED MATERIALS"
17 Defendants.)	

18
19 STIPULATION

20 The United States of America and defendant Oscar Vanegas, by and through undersigned
21 counsel, hereby stipulate as follows:

22 Defendant is charged in a two-count Indictment with violations of 21 U.S.C. §§ 846 and
23 841(a)(1) and (b)(1)(B)(viii) (conspiracy to distribute and possess with intent to distribute
24 methamphetamine) and 21 U.S.C. § 841(a)(1) and (b)(1)(B)(viii) (distribution and possession with intent
25 to distribute methamphetamine).

26 Pursuant to the defendant's request for discovery, the government has made an initial production
27 of written discovery materials in this case. The government intends to produce additional discovery
28 containing identification information of a confidential informant (CI) and/or undercover officers (UCs).

1 Because the CI and at least some of the UCs continue to work undercover in ongoing investigations, the
2 government submits that there is reason to believe that they would be endangered if their identity,
3 image, and/or other identifying information are improperly disclosed. The defendant does not concede
4 that the government's concerns are justified, but agrees that witness-endangerment issues can justify
5 reasonable restrictions on the disclosure of discovery.

6 Pursuant to this stipulated Protective Order, the government will produce to defense counsel
7 audio and video recordings pertaining to the charges in the Indictment. The audio and video recordings
8 include materials that the government deems to be sensitive, based on the above-mentioned witness
9 safety concerns.

10 Materials produced according to this Protective Order will be labeled as "PROTECTED
11 MATERIALS" and will include (1) audio recordings of communications and/or meetings between the
12 defendant and CI and/or UC and (2) video recordings of communications and/or meetings between the
13 defendant and CI and/or UC. This Protective Order does not apply to discovery that is not marked
14 PROTECTED MATERIALS. Any discovery with the designation PROTECTED MATERIALS is,
15 however, subject to this Protective Order with the following restrictions:

16 1. Except when actively being examined for the purpose of the preparation of the defense of
17 either defendant, all PROTECTED MATERIALS shall be stored and maintained in a locked or
18 otherwise secure location or device (if stored electronically), meaning, a location or device which is
19 accessible only to Covered Individuals as defined in paragraph 2 below. Defense counsel and other
20 Covered Individuals shall not permit any person access of any kind to the PROTECTED MATERIALS,
21 except as set forth below.

22 2. Only the following individuals ("Covered Individuals") may examine, view, or listen to
23 the PROTECTED MATERIALS:

- 24 a. Defendant's counsel of record;
- 25 b. Members of defense counsel's law office who are assisting with the preparation of
- 26 either defendant's defense, but not including any person with a prior relationship
- 27 to any defendant that falls outside the scope of legal representation (e.g., a
- 28 familial or social relationship);

- 1 c. “Contracted Individuals,” whom the defense engages to assist in this matter,
2 including paralegals, attorneys, discovery coordinators, investigators and/or
3 experts. The parties agree that “Contracted Individuals” shall be limited to
4 professionals contracted to assist defense counsel in the defense of this matter,
5 and shall not include any individual with a prior relationship that falls outside the
6 scope of legal representation (e.g., a familial or social relationship); and
7 d. The defendant, but only in the presence of defense counsel or another authorized
8 person listed in this paragraph.

9 PROTECTED MATERIALS, or any copy or image thereof, may not be shown, played (in the
10 case of an audio and video recording), or otherwise divulged to any individual who is not a Covered
11 Individual.

12 3. The Covered Individuals may examine the PROTECTED MATERIALS for the purpose
13 of preparing a defense of defendant, and for no other purpose. The Covered Individuals may not discuss
14 the contents of the PROTECTED MATERIALS with any person not listed in Paragraph 2. Counsel for
15 the defendant may make two physical or electronic copies of any materials designated as PROTECTED
16 MATERIALS. Counsel may make a copy of the PROTECTED MATERIALS for each expert retained
17 to assist in the preparation of the defense or to testify at trial.

18 4. If defense counsel determines that a person not covered by this Protective Order needs to
19 review the PROTECTED MATERIALS, he or she must first confer with the government, except under
20 the limited circumstances under which the defendant may move the Court ex parte to disclose the
21 PROTECTED MATERIALS to an individual who is not otherwise a Covered Individual. The
22 defendant may seek this ex parte relief only based on a showing, and a Court finding, of necessity for
23 the request to be ex parte and that the individual’s access to the PROTECTED MATERIALS is material
24 to the defense. The defendant reserves the right to withdraw his ex parte request should the Court
25 decline to allow the defendant to proceed ex parte. Otherwise, the defendant should confer with the
26 government and, if the parties agree that the individual not otherwise covered by this Protective Order
27 should be permitted to access the PROTECTED MATERIALS, the parties shall document that
28 agreement in writing, and no further involvement of the Court will be necessary. If the parties cannot

1 agree, however, the defendant may move the Court for an order allowing the individual to review the
2 PROTECTED MATERIALS, provided the defendant gives the government three days' notice. Whether
3 by agreement of the parties or by order of the Court, if an individual is authorized to view, examine, or
4 otherwise receive the PROTECTED MATERIALS, such individual will be deemed a "Covered
5 Individual" under paragraph 2 of this Protective Order and thus shall be subject to the restrictions set
6 forth herein.

7 5. A copy of this Protective Order shall be maintained with the PROTECTED
8 MATERIALS at all times.

9 6. Under no circumstance may any defendant take or keep any PROTECTED
10 MATERIALS, or any copies or images of PROTECTED MATERIALS, outside the presence of defense
11 counsel. The defendant shall not divulge to any person who is not a Covered Individual any personal
12 identifying information disclosed in PROTECTED MATERIALS.

13 7. Prior to receiving access to the PROTECTED MATERIALS, all individuals other than
14 defense counsel and defendant shall sign a copy of this Protective Order acknowledging that:

- 15 a. They have reviewed the Order;
- 16 b. They understand its contents;
- 17 c. They agree that they will only access the PROTECTED MATERIALS for the
18 purposes of preparing a defense for either defendant; and,
- 19 d. They understand that failure to abide by this Protective Order may be considered
20 contempt of Court, punishable accordingly.

21 These signed copies shall be maintained by counsel for the defense and shall be made available to the
22 government upon a sealed request to the Court.

23 8. If the PROTECTED MATERIALS are attached to any pleadings or other court
24 submissions, the PROTECTED MATERIALS and any pleadings or submissions referencing those
25 materials shall be filed or lodged under seal.¹

26 9. The defense team shall return the PROTECTED MATERIALS (and any duplicate copies
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28 ¹ This Order authorizes such filings under seal and the parties are not required to seek additional
authorization from the Court to do so.

1 of the same) to the government, or certify in writing that they have been destroyed, fourteen calendar
2 days after any one of the following events, whichever is latest in time: dismissal of all charges against
3 the defendant; the defendant's acquittal by court or jury; the expiration of time to appeal a judgment; or,
4 the conclusion of any direct appeal.

5 10. After the conclusion of proceedings in the district court or any direct appeal in the above-
6 captioned case, the government will maintain a copy of the PROTECTED MATERIALS. The United
7 States will maintain the PROTECTED MATERIALS until the time period for filing a motion pursuant
8 to 28 U.S.C. § 2255 has expired. After the statutory time period for filing such a motion has expired, the
9 government may destroy the PROTECTED MATERIALS. In the event the defendant is represented by
10 counsel and files a motion pursuant to 28 U.S.C. § 2255, the government will provide that counsel with
11 a copy of the PROTECTED MATERIALS under the same restrictions as trial and direct appeal defense
12 counsel. The defendant's attorney in any action under 28 U.S.C. § 2255 shall return the same materials,
13 or certify in writing that they have been destroyed, fourteen calendar days after the district court's ruling
14 on the motion or fourteen calendar days after the conclusion of any direct appeal of the district court's
15 denial of the motion, whichever is later.

16 **IT IS SO STIPULATED.**

17 DATED: October 30, 2017

Respectfully submitted,

18 BRIAN J. STRETCH
19 United States Attorney

20 /s/
21 JULIE D. GARCIA
22 Assistant United States Attorney

23 /s/
24 SARA RIEF
25 Attorney for Oscar Vanegas
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IT IS SO ORDERED.